

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

UNITED STATES OF AMERICA

v.

CRIMINAL NO. 2:07-00020

MATTHEW COOK CASEY

MEMORANDUM OPINION AND ORDER

Pending before the court is defendant's motion to continue his trial date, pre-trial motions hearing, and deadline for filing pre-trial motions. (Doc. No. 63.) Counsel for defendant states that the DNA evidence in this case will not be provided to defendant for another two weeks. (Id. at 1.) Defendant's expert will need to review the evidence and it may be necessary for defendant to conduct an independent test of the DNA. (Id. at 2.) Upon review of the DNA evidence, defendant may need to file additional pretrial motions. (Id.) The government does not oppose defendant's motion to continue. For the following reasons, defendant's motion to continue (Doc. No. 63) is **GRANTED**.

The Speedy Trial Act, 18 U.S.C. § 3161, requires that a defendant be tried within seventy days of either the indictment or initial appearance, whichever occurs last.¹ 18 U.S.C. § 3161(c)(1). In computing the time within which the trial must commence, the Speedy Trial Act excludes periods of delay:

. . . resulting from a continuance granted by any judge . . . at the request of the defendant or his counsel . . . if the judge granted such continuance on the basis of his findings that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial.

¹ Defendant was indicted on January 18, 2007 (Doc. No. 3). His initial appearance occurred on February 21, 2007 (Doc. No. 15).

18 U.S.C. § 3161(h)(8)(A). Because failure to grant the requested continuance would likely result in a miscarriage of justice, the court finds that the ends of justice outweigh the best interest of the defendant and the public in a speedy trial, see 18 U.S.C. § 3161(h)(8)(A), and **GRANTS** defendant's motion to continue (Doc. No. 63). In deciding to grant defendant's motion, the court considered the factors outlined in 18 U.S.C. § 3161(h)(8)(B) and found that failure to grant the continuance would deny counsel for defendant the reasonable time necessary to effectively prepare for trial, taking into account the exercise of due diligence.

Accordingly, the court hereby **ORDERS** as follows:

1. Trial of this action is continued until **Tuesday, December 11, 2007, at 9:30 a.m.** in Charleston, West Virginia;
2. Any remaining pretrial motions are to be filed by **October 15, 2007;**
3. A pretrial motions hearing is scheduled for **Tuesday, October 30, 2007, at 11:00 a.m.** in Charleston, West Virginia;
4. Pursuant to 18 U.S.C. § 3161(h)(8)(A), the delay resulting from this continuance, beginning with the filing of defendant's motion, shall be excluded for purposes of the Speedy Trial Act.

The Clerk is directed to send a copy of this Memorandum Opinion and Order to counsel of record, the United States Marshal

for the Southern District of West Virginia, and the Probation Office of this court.

IT IS SO ORDERED this 31st day of July, 2007.

ENTER:

A handwritten signature in cursive script, reading "David A. Faber", is written over a horizontal line.

David A. Faber
Chief Judge